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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,339	11/28/2003	Pat R. Mitchell	465	9966

7590

05/20/2005

Robert Charles Hill
235 Montgomery Street #821
San Francisco, CA 94104

EXAMINER

FOX, CHARLES A

ART UNIT

PAPER NUMBER

3652

DATE MAILED: 05/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/724,339

Applicant(s)

MITCHELL ET AL.

Examiner

Charles A. Fox

Art Unit

3652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20031128.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the flat spots on the cam must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3652

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder in view of Staar. Regarding claims 1,2 and 5 Schroeder US 5,338,955 teaches an automated warehouse row cart comprising:

- a rail car (70) for trucking loads within an automated warehouse;

- a top tray (71) disposed on said car for lifting and lowering said loads;

- a lifter for said top tray located within said car;

- a motor and transmission assembly (170) for raising and lowering said lifter.

Schroeder does not teach the lifting device as being cam operated. Staar US 4,238,055 teaches a lift device comprising:

- a lift plate (26);

- a set of cam lifters (28) disposed about a vertical axis of said plate;

- a multi lobe cam (11) disposed on the edge of a cylinder;

- said cylinder also aligned along said axis;

wherein said cam lifters ride along said cam to provide straight vertical lifting of the platform;

- a motor and transmission for turning said cam relative to said plate;

wherein the lobes of said cam are symmetrical to allow said motor to operate in a single direction for both lifting and lowering of said platform. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Schroeder with a lift device as taught by Staar in order to easily reciprocate the lifting

Art Unit: 3652

platform with a one way motor thereby making the device less costly to produce while using a well known means for reciprocal lifting.

Regarding claim 6 Schroeder further teaches the row car as being able to dock with an aisle car.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder and Staar as applied to claim 1 above, and further in view of Weeper. Schroeder and Staar teach the limitations of claim 1 as above, they do not teach a three lobed cam. Weeper US 4,289,466 teaches a cam (29) with surfaces (30) forming lobes upon said cam, wherein said surfaces may form 3 lobes if desired by the designer of the device. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Schroeder and Staar with a three lobed cam as taught by Weeper in order to allow the device to more stable when the lifting plate is supporting a load.

Claim Rejections - 35 USC § 103

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schroeder and Staar as applied to claim 1 above, and further in view of Bernardi. Schroeder and Staar teach the limitations of claim 1 as above, they do not teach dwell point on the cam. Bernardi US 6,176,258 teaches a cam(100) with flat point (98) for allowing the cam to be easily positioned at a predetermined stopping point. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Schroeder and Staar with dwell point as taught by Bernardi in order to stop the lift device at predetermined locations in an easily controllable manner.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 5 and 6 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 11 of U.S. Patent No. 6,652,213 in view of Staar. Us Patent No. 6,652,213 to Mitchell et al. discloses the row cart and aisle cart means as claimed in the instant invention with a generic lifting device disclosed in the row cart. Starr teaches a reciprocating cam lifting device as outlined above. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the row cart taught by Mitchell et al. with a lifting device as taught by Staar in order to easily reciprocate the lifting platform with a one way motor thereby making the device less costly to produce while using a well known means for reciprocal lifting.

The prior art made of record and not relied upon, but considered pertinent to applicant's disclosure is: Blonsky 1973, Loomer 1976, Gross 1976, Hauke et al. 1978, Ohira et al. 1999, Grover et al. 2000 and Sheehy, Jr. 2004.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 571-272-6923. The examiner can normally be reached between 7:00-4:00 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 571-272-6607. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



EILEEN D. LILLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

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